

1 GILBERT R. SEROTA (No. 75305)  
Email: gserota@howardrice.com  
2 HOWARD RICE NEMEROVSKI CANADY  
FALK & RABKIN  
3 A Professional Corporation  
Three Embarcadero Center, 7th Floor  
4 San Francisco, California 94111-4024  
Telephone: 415/434-1600  
5 Facsimile: 415/217-5910

6 Attorneys for Defendants  
JOSEPH E. BARATTA AND TBIG  
7 FINANCIAL SERVICES, INC.

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA

11 VIOLETTA ETTARE,

12 Plaintiff,

13 v.

14 JOSEPH E. BARATTA, an individual, TBIG  
15 FINANCIAL SERVICES, INC., form of  
16 business unknown, WACHOVIA  
17 SECURITIES, LLC, a Delaware Limited  
Liability Company, MARK WIELAND, an  
individual, and DOES 1-25,

18 Defendant.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. C-07-04429-JW (PVT)

DECLARATION OF JOSEPH E.  
BARATTA IN SUPPORT OF  
DEFENDANTS' JOINT OPPOSITION  
TO PLAINTIFF'S MOTION TO  
REMAND AND MOTION FOR LEAVE  
TO AMEND REMOVAL NOTICE

Date: Monday, December 3, 2007  
Time: 9:00 a.m.  
Place: Courtroom 8, 4th Floor  
Judge: Hon. James Ware

1 I, JOSEPH E. BARATTA, declare as follows:

2 1. Except where otherwise indicated, I have personal knowledge of the facts  
3 stated in this declaration, and as to any facts of which I lack personal knowledge I am  
4 informed and believe they are true. If called upon as a witness I could and would testify to  
5 the facts stated herein.  
6

7 2. I am a citizen of the State of Nevada, resident at 756 Lakeshore Boulevard,  
8 Incline Village, Nevada.  
9

10 3. My wife and I bought our home in Nevada in 2000, and although we still  
11 own a second home in California, which is currently leased, we have been residents of the  
12 State of Nevada and have filed our personal and TBIG taxes in the State of Nevada since at  
13 least 2001.

14 4. I am registered to vote with the State of Nevada, my daughter attends school  
15 full time at the Lake Tahoe School in Incline Village, Nevada, I have been a member of the  
16 Board of Trustees for the Lake Tahoe School since 2004 and am currently Chairman of the  
17 Finance Committee.  
18

19 5. TBIG Financial Services, Inc. ("TBIG") is a corporation incorporated under  
20 the laws of the State of Nevada, having its principal place of business at 756 Lakeshore  
21 Boulevard, Incline Village, Nevada. TBIG's Corporate Charter and Articles of  
22 Incorporation filed with the State of Nevada on October 20, 2000 are attached as Exhibit A,  
23 and an excerpt of TBIG's Annual Amendment of its Form ADV dated March 28, 2007 is  
24 attached as Exhibit B.

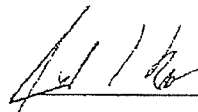
25 6. TBIG had been a California corporation, but ceased to be so on November  
26 27, 2000 when it merged into the Nevada corporation. Attached as Exhibit C are TBIG's  
27 records printed from the Nevada Secretary of State website showing the merger.  
28

1           7. I am the sole officer and director of TBIG. See Exhibits A and C, attached.

2           8. I have reviewed TBIG's 2005 form ADV cited by Dr. Ettare in her Motion  
3 to Remand and noticed that it sets forth a 650 cellular phone as TBIG's primary contact  
4 information and two 650 telephone and fax numbers on Schedule D, page 1. The 650  
5 cellular phone is provided as TBIG's primary number because it works internationally,  
6 whereas TBIG's original 877 number did not. But that number is billed to my home in  
7 Nevada. The 650 numbers contained on Schedule D, page 1 refer to the location where  
8 TBIG kept certain books and records other than its principal place of business. Those  
9 numbers are no longer utilized by TBIG.

10           9. I was served with Dr. Ettare's complaint on August 3, 2007 at my home in  
11 Nevada. At some point soon thereafter, I became aware that TBIG had inadvertently failed  
12 to make certain filings required by the Nevada Secretary of State and that TBIG's status as a  
13 Nevada corporation had been revoked on November 01, 2002. I immediately took the steps  
14 necessary to reinstate TBIG's corporate charter, which I accomplished by August 31, 2007,  
15 as shown on Exhibit C.

16           I declare under penalty of perjury under the laws of the United States that the  
17 foregoing is true and correct, and that this Declaration was executed in Incline Village,  
18 Nevada on October 25, 2007.  
19  
20

21  
22 

23 JOSEPH E. BARATTA  
24  
25  
26  
27  
28

HOWARD  
RICE  
NEMERKOVSKI  
CANADY  
BALK  
S. P. ARKIN

# **EXHIBIT A**

10/30/00

13:09

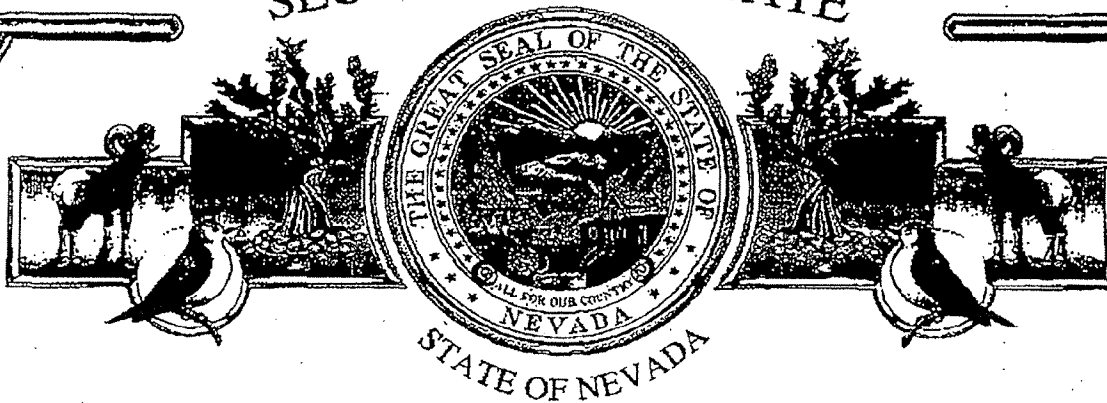
GKL AGL

FILING → 408 9931335

NO.343

002

# SECRETARY OF STATE



## CORPORATE CHARTER

I, DEAN HELLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that **TBIG FINANCIAL SERVICES, INC.** did on **October 26, 2000** file in this office the original Articles of Incorporation; that said Articles are now on file and of record in the office of the Secretary of State of the State of Nevada, and further, that said Articles contain all the provisions required by the law of said State of Nevada.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, on **October 30, 2000**.

*Dean Heller*

Secretary of State

By *Denise A. Bates*

Certification Clerk

10/30/00 13:09 GKL AGE FILING → 408 9931335

NOV 21 2000 11:44AM

NO. 1309 NO. 343 003  
F. 3/4DEAN HELLER  
Secretary of State101 North Carson Street, Suite 3  
Carson City, Nevada 89701-4786  
(775) 684 5708

Office Use Only:

FILED # C28859-00

OCT 26 2000

IN THE OFFICE OF  
Dean Heller  
DEAN HELLER, SECRETARY OF STATE

Important: Read attached instructions before completing form.

1. <u>Name of Corporation:</u>	TBIG Financial Services, Inc.			
2. <u>Resident Agent Name and Street Address:</u> <small>(Must be a Nevada resident and authorized to transact business in Nevada)</small>	Name <u>Joseph E. Baratta</u> <u>756 Lakeshore Blvd., Incline Village</u> City <u>NEVADA</u> Zip Code <u>89451</u>			
3. <u>Shares:</u> <small>(Must be in whole shares and authorized to transact business in Nevada)</small>	Number of shares with par value: <u>1,000,000</u> Par value: <u>\$0.01</u> Number of shares without par value: <u>None</u>			
4. <u>Names, Addresses, Number of Board of Directors/Trustees:</u>	The First Board of Directors/Trustees shall consist of <u>One</u> members whose names and addresses are as follows: 1. <u>Joseph E. Baratta</u> Name <u>756 Lakeshore Blvd., Incline Village, NV</u> State <u>NV</u> Zip Code <u>89451</u> Street Address City State Zip Code 2. _____ Name _____ Street Address City State Zip Code 3. _____ Name _____ Street Address City State Zip Code 4. _____ Name _____ Street Address City State Zip Code			
5. <u>Purpose:</u> <small>(Optional - See Instructions)</small>	The purpose of this Corporation shall be: <u>Investment</u>			
6. <u>Other Matters:</u> <small>(Optional - See Instructions)</small>	Number of additional pages attached: <u>None</u>			
7. <u>Names, Addresses and Signatures of Incorporators:</u> <small>(Attach separate sheets if more than one incorporator)</small>	<u>Joseph E. Baratta</u> Name <u>Joseph E. Baratta</u> Signature <u>756 Lakeshore Blvd., Incline Village, NV</u> State <u>NV</u> Zip Code <u>89451</u> Address City State Zip Code Name _____ Signature _____ Address _____ City _____ State _____ Zip Code _____			
8. <u>Certificate of Acceptance of Appointment of Resident Agent:</u>	I, <u>Joseph E. Baratta</u> hereby accept appointment as Resident Agent for the above named corporation. <u>Joseph E. Baratta</u> Date <u>10-25-00</u> Signature of Resident Agent Date			

This form must be accompanied by appropriate fees. See attached fee schedule.

Revised by Secretary of State Form 2 (CORPORATE) 06/01/00  
REVISED ON 06/01/00

## **EXHIBIT B**

Web IARD - ADV Part 1A, 2 [User Name: sbaratta, OrgID: 10640

Page 1 of 1

# **FORM ADV** **UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

<b>Primary Business Name: BARATTA INVESTMENT GROUP TBIG FINANCIAL SERVICES</b>	<b>CRD Number: 106404</b>
--	-------------------------------

<b>ADV - Annual Amendment, Page 2</b>	<b>Rev. 02/2005</b>
<b>3/28/2007 4:14:57 PM</b>	

## **Item 1 Identifying Information (Continued)**

### **F. Principal Office and Place of Business**

**(1) Address (do not use a P.O. Box):**

Number and Street 1:

756 LAKESHORE DRIVE

Number and Street 2:

City:

INCLINE VILLAGE

State:

NV

Country:

USA

ZIP+4/Postal Code:

89452

If this address is a private residence, check this box: ☒

*List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.*

**(2) Days of week that you normally conduct business at your principal office and place of business:**

☒ Monday-Friday ☐ Other:

Normal business hours at this location:

5:00 AM TO 6:00 PM

**(3) Telephone number at this location:**

650-823-6163

**(4) Facsimile number at this location:**

650-823-6163

**G. Mailing address, if different from your principal office and place of business address:**

Number and Street 1:

P.O. BOX 8746

Number and Street 2:

City:

INCLINE VILLAGE

State:

NV

Country:

USA

ZIP+4/Postal Code:

89452

If this address is a private residence, check this box: ☒

**H. If you are a sole proprietor, state your full residence address, if different from your principal office and place of business address in Item 1.F.:**

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:



**EXHIBIT C**

**TBIG FINANCIAL SERVICES, INC.****Business Entity Information**

Status:	Active on 9/6/2007	File Date:	10/26/2000
Type:	Domestic Corporation	Corp Number:	C28859-2000
Qualifying State:	NV	List of Officers Due:	10/31/2008
Managed By:		Expiration Date:	

**Resident Agent Information**

Name:	CENTERPOINT CORPORATE SERVICES, INC.	Address 1:	865 TAHOE BLVD SUITE 214
Address 2:		City:	INCLINE VILLAGE
State:	NV	Zip Code:	89451
Phone:		Fax:	
Email:		Mailing Address 1:	
Mailing Address 2:		Mailing City:	
Mailing State:		Mailing Zip Code:	

**Financial Information**

No Par Share Count:	0	Capital Amount:	\$ 10,000.00
Par Share Count:	1,000,000.00	Par Share Value:	\$ 0.01

**Officers**☐ Include Inactive Officers**President - JOSEPH E BARATTA**

Address 1:	865 TAHOE BLVD	Address 2:	STE 214
City:	INCLINE VILLAGE	State:	NV
Zip Code:	89451	Country:	
Status:	Active	Email:	

**Secretary - JOSEPH E BARATTA**

Address 1:	865 TAHOE BLVD	Address 2:	STE 214
City:	INCLINE VILLAGE	State:	NV
Zip Code:	89451	Country:	
Status:	Active	Email:	

**Treasurer - JOSEPH E BARATTA**

Address 1:	865 TAHOE BLVD	Address 2:	STE 214
City:	INCLINE VILLAGE	State:	NV
Zip Code:	89451	Country:	
Status:	Active	Email:	

**Director - JOSEPH E BARATTA**

Address 1:	865 TAHOE BLVD	Address 2:	STE 214
City:	INCLINE VILLAGE	State:	NV
Zip Code:	89451	Country:	
Status:	Active	Email:	

**Actions\Amendments**

Action Type: Articles of Incorporation			
Document Number: C28859-2000-001		# of Pages:	1
File Date: 10/26/2000		Effective Date:	
(No notes for this action)			
Action Type: Merger			

Document Number:	C28859-2000-003	# of Pages:	2
File Date:	11/27/2000	Effective Date:	
ARTICLES OF MERGER FILED MERGING TBIG FINANCIAL SERVICES, INC., A (CA)			
CORPORATION NOT QUALIFIED IN NEVADA, INTO THIS CORPORATION. (2)PGS. MMR			
Action Type:	Initial List		
Document Number:	C28859-2000-002	# of Pages:	1
File Date:	02/20/2001	Effective Date:	
List of Officers for 2000 to 2001			
Action Type:	Acceptance of Resident Agent		
Document Number:	20070607607-55	# of Pages:	1
File Date:	08/31/2007	Effective Date:	
(No notes for this action)			
Action Type:	Reinstatement		
Document Number:	20070607608-66	# of Pages:	1
File Date:	08/31/2007	Effective Date:	
(No notes for this action)			
Action Type:	Acceptance of Resident Agent		
Document Number:	20070607611-10	# of Pages:	1
File Date:	08/31/2007	Effective Date:	
ADDITIONAL ARA FILED WITH REI			